IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8367 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKESH NARANBHAI KHATIK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8367 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No.3

M IA SHAIKH for Respondent No. 4

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/11/2004

ORAL JUDGEMENT

1. By way of this Special Civil Application under

Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 01.07.2004 passed by the District Magistrate, Vadodara, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Heard the learned advocates for the respective parties and perused the affidavit-in-reply filed by the respondent No.1 and counter affidavit filed by the respondent No.4.

3. Mr.H.R.Prajapati, learned advocate for the petitioner has mainly argued that pursuant to the impugned detention order, the detenu has been arrested on 4th July, 2004. Thereafter, against the impugned detention order, the petitioner made a detail representation dated 7th July, 2004 through his advocate, by Regd. P.A.D., which has been received by the detaining authority on 9th July, 2004 and the same was remained unattended upto and not forwarded to the Higher Authority for appropriate action till 13th July, 2004. Thus, it is clear that the detaining authority has failed to discharge its duty in promptly dealing with the representation made on behalf of the petitioner, which is illegal as per the settled law.

4. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, though the detenu has sent the representation on 7th July, 2004 to the detaining authority, the same has been received by the detaining authority on 9th July, 2004. However, the same remained unattended with the detaining authority upto 13th July, 2004 and the said delay in forwarding the representation to the Higher Authority has not been satisfactorily explained by the detaining authority and, thereby detaining authority has failed to discharge its duty. Therefore, in view of the above judgment of the Apex Court, the continued detention of the detenu is bad and

the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 1st July, 2004 passed against the detenu Mukesh Naranbhai Khatik is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[R. P. DHOLAKIA,J]

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